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South Sudan: The Human Rights Council should fully renew the mandate of the Commission on Human Rights in South Sudan

To Permanent Representatives of Member and Observer States of the United Nations Human Rights Council

12 February 2019

Your Excellencies,

We, the undersigned national, regional and international non-governmental organisations, write to call on your delegation to actively support the full renewal of the mandate of the UN Commission on Human Rights in South Sudan (“the Commission” or “the CoHR”) during the 40th session of the UN Human Rights Council (“the Council”), which will take place from 25 February-22 March 2019.

Although the signing of the Revitalised Peace Agreement for Resolution of the Conflict in the Republic of South Sudan (R-ARCSS), on 12 September 2018, has offered some hope to the people of South Sudan, fighting has continued in parts of the country and significant human rights issues remain unaddressed. The consistent failure by the Government of South Sudan to address violations and abuses is a key driver of ongoing violence.

The Council is uniquely placed to stress that sustainable peace cannot be achieved without justice and to ensure that the existing international investigative and advisory mechanism for South Sudan can continue its work until a robust accountability mechanism can offer the victims and survivors justice and redress.

Unfortunately, progress on the Hybrid Court for South Sudan (HCSS) and other transitional justice mechanisms provided for in the August 2015 Peace Agreement has stalled. The Commission is currently the only mechanism capable of conducting impartial and independent investigations into crimes under international law and other human rights violations committed in the context of the conflict, and collecting and preserving evidence. We urge you to extend the Commission’s mandate until the HCSS, or at a minimum its investigative branch, is operational.

We call on the Council to follow up on its meaningful action on South Sudan to date by renewing the Commission’s mandate to enable it to support justice, truth, and reparations for the victims of the crimes committed in the country and to contribute to ensuring sustainable peace. Member and Observer States should support the development and adoption of a resolution that:

- Renews the mandate of the Commission in full, to allow it to continue to conduct independent investigations into alleged human rights violations and abuses and violations of international humanitarian law, and to collect and preserve evidence of, and clarify responsibility for, alleged gross violations and abuses of human rights and related crimes, with a view to ending impunity and ensuring accountability, with a particular focus on sexual and gender-based crimes, and attacks or reprisals against human rights defenders, humanitarian aid workers and other independent actors;

- Urges the Government of South Sudan and opposition groups to allow and facilitate access to all locations and persons of interest to the Commission;
- Requests that reports and updates of the Commission be transmitted to the African Union (AU) Commission in order to support and inform future investigations of the Hybrid Court for South Sudan and the UN Security Council for consideration and further action;
- Encourages the AU Commission to take immediate steps, including the establishment of the Hybrid Court for South Sudan, to ensure justice for serious crimes committed, as recommended by the AU Commission of Inquiry on South Sudan and provided for in the 2015 Peace Agreement and the 2018 Revitalised Agreement;
- Urges the Government of South Sudan to sign the Memorandum of Understanding to formally establish and operationalise the Hybrid Court; and
- Urges all States to encourage further concrete action to deter and address ongoing violations of international law at the UN Security Council.

We thank you for your attention to these pressing issues.

Sincerely,

African Sex Workers Alliance (ASWA)
 AJPD-Angola
 Amnesty International
 Anataban
 ARTICLE 19
 Assistance Mission Africa (AMA)
 Center for Inclusive Governance, Peace and Justice (CIGPJ)
 Center for Reproductive Rights
 CIVICUS
 Commission indépendante des droits de l'Homme (Morocco)
 Cush Organization for Development and Advocacy
 DefendDefenders (the East and Horn of Africa Human Rights Defenders Project)
 Dialogue and Research Initiative (DRI)
 End Impunity Organization (EIO)
 Equality Now
 Exiled Human Rights Defenders (EHRD)
 FIDH (International Federation for Human Rights)
 Foundation for Democracy and Accountable Governance (FODAG)
 Human Rights Watch
 Padeo South Sudan
 Remembering the Ones We Lost (ROWL)
 Solidarity Ministries Africa for Reconciliation and Development (SMARD)
 South Sudan Law Society
 South Sudan Women Empowerment Network (SSWEN)
 West Africa Human Rights Defenders Network (ROADDH/WAHRDN)

ANNEX: CONTINUED NEED FOR MONITORING, INVESTIGATION, AND ADVICE, INCLUDING ON TRANSITIONAL JUSTICE AND RECONCILIATION

On 14 December 2018, the Commission stressed that “South Sudan’s leaders must seize the unique opportunity the recent peace deal provides and work to stop the violence completely, ensure accountability, restore peace and assist the countless victims of this damaging conflict to rebuild their lives.”¹ They and other actors, including the UN Mission in South Sudan (UNMISS), the Office of the UN High Commissioner for Human Rights (OHCHR),² and human rights NGOs, identified a number of outstanding human rights issues that must be addressed, including sexual and gender-based violence, impunity, and restrictions to civic space:

- **Ongoing violence, including sexual and gender-based violence (SGBV) and human rights violations and abuses:** In recent weeks, reports have emerged of continued recruitment of soldiers, including child soldiers, by the former warring parties, as well as resumed fighting in some parts of the country, especially former Central Equatoria State. In late November 2018, Doctors Without Borders (MSF) reported that over 150 women and girls were sexually assaulted and raped over the course of several days in Bentiu.³ Millions of South Sudanese remain internally displaced or have fled the country. Hundreds of civilians, abducted as political detainees or as a result of failures to distinguish between civilians and combatants, remain in detention. In the words of a civil society member interviewed by the Commission, the South Sudanese are facing a situation of “no peace, no war”⁴ with no certainty over a lasting cessation of hostilities and decrease in violence. The Commission could tip the scale in favour of sustainable peace by pursuing accountability and providing advice on, and for, effective transitional justice mechanisms.
- **Impunity:** Instability continues to prevail amid unaddressed and ongoing violations, some of which may amount to war crimes or crimes against humanity. Impunity continues to catalyse abuses. Conversely, accountability, especially at the command responsibility level, forms an essential part of peace-building and guarantees of non-recurrence. Perpetrators of violations must be held to account as part of a comprehensive effort to end violence and deter further fighting. It is imperative that no amnesty is granted to perpetrators of grave violations and that those responsible are held to account. Although the Government has taken measures to prosecute violations, including in relation to the “Terrain Hotel” case, no senior official has been held to account, and impunity for sexual violence against South Sudanese women and girls persists. Despite pledges by South Sudan’s Council of Ministers to approve the establishment of the AU Hybrid Court for South Sudan as per Chapter V of the peace agreement, the Government is yet to sign the MoU with the AU to operationalise the Court.

¹ “UN human rights experts say South Sudan leaders should seize the opportunity of the revitalized peace process to ensure accountability and help victims of the conflict rebuild their lives,” 14 December 2018, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24021&LangID=E (accessed on 14 January 2019).

² “South Sudan: UN report urges release of hundreds of abducted civilians,” 18 October 2018, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23732&LangID=E (accessed on 15 January 2019).

³ *Ibid.*

⁴ “Opening Remarks by Chairperson of the Commission on Human Rights in South Sudan at Press Conference UNMISS HQ, Tomping, Juba,” 7 December 2018, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23998&LangID=E (accessed on 14 January 2019).

- **Lack of adequate reparation, truth, and reconciliation:** The lack of adequate reparations and compensation, truth-telling, psychosocial support and guarantees of non-recurrence, limits prospects for reconciliation. As stressed by the CoHR, South Sudan needs a holistic transitional justice programme that includes a Commission on Truth, Reconciliation and Healing (CTRH) and a Compensation and Reparation Authority (CRA). Disarmament, demobilization and reintegration (DDR) and the establishment of a vetting system in the army and security forces will also be key to ensuring lasting peace. These are complex, yet crucial, transitional justice mechanisms to establish. The CoHR is endowed with a key reporting and advisory role with regard to transitional justice, which it should be given more time to carry out.
- **Civic space:** Human rights defenders (HRDs), civil society and humanitarian workers are routinely banned from accessing and providing aid to victims and freely expressing their opinion. HRDs and journalists face intimidation, threats, harassment and reprisals, including threats to their physical integrity,⁵ by state and non-state actors. Many have been forced into exile. The Council should recognise the challenges they face and send a clear message to the authorities that sustainable peace cannot be achieved without creating and maintaining a safe and enabling environment in which independent actors can operate free from hindrance and insecurity. Civic space, including freedoms of expression, peaceful assembly and association, and inclusive citizen participation, should be guaranteed. The Commission, as an independent body, is able to both investigate violations of freedoms of expression, peaceful assembly and association and related rights and speak out on behalf of those who are unable to.

The Commission is of instrumental value. Its mandate includes, *inter alia*, monitoring and reporting on the situation of human rights in South Sudan, collecting and preserving evidence of alleged gross violations and abuses of human rights and related crimes, and providing guidance on transitional justice, reconciliation and healing. The Commission should, through an extension of its mandate and adequate staffing and budget allocations, be allowed to conduct more substantive work on aspects of its mandate it has been unable to fully focus on so far, including transitional justice and reconciliation, and in coordination with international and regional actors, such as UN-MISS, the AU and the Intergovernmental Authority on Development (IGAD), and to contribute to closing the impunity gap thereby securing steps towards sustainable peace in South Sudan.

⁵ See for instance Amnesty Urgent Actions, 27 August and 31 July 2018, respectively, www.amnesty.org/download/Documents/AFR6589942018ENGLISH.pdf and www.amnesty.org/download/Documents/AFR6588532018ENGLISH.pdf (accessed on 25 January 2019). See also DefendDefenders, “This Is Our Freedom. These Are Our Rights”: Human rights defenders in South Sudan since July 2016,” 26 April 2018, www.defenddefenders.org/publication/this-is-our-freedom-these-are-our-rights-human-rights-defenders-in-south-sudan-since-july-2016/ (accessed on 25 January 2018).